

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Residential Building
Contractor License of Northern Building
Solutions, Inc., and Joseph W.
Christensen, individually

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge M. Kevin Snell ("ALJ") on June 18, 2009, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry ("Department"). Respondent Northern Building Solutions, Inc. ("Northern Building") appeared through its qualifying person, Joseph W. Christensen. Mr. Christensen appeared on his own behalf, without legal counsel. The record closed at the conclusion of the hearing on June 18, 2009.

STATEMENT OF THE ISSUES

1. Are the Respondents subject to discipline because their actions or inaction were the cause for homeowners to receive recovery from the Contractor Recovery Fund?
2. Are the Respondents subject to discipline because their actions or inaction constitute financial irresponsibility?
3. Are the Respondents subject to discipline because they failed to notify the Department of multiple judgments against them?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Northern Building was first licensed by the Department as a residential building contractor, license number 20261810, on February 20, 2001, and was continuously licensed until March 31, 2009, when the license expired for non-renewal.¹

¹ Test. of Charlie Durenberger, Manager, Enforcement Services, Construction Codes and Licensing Division of the Department.

Respondents have not submitted an application for renewal of Northern Building's license. Mr. Joseph W. Christensen is the owner of Northern Building and is the "qualifying person" for Northern Building's license.²

2. Northern Building built and remodeled cabins and homes continuously from 2001 to 2007 without a complaint by any homebuyer or subcontractor.³ In all of those jobs, the subcontractors were paid and no complaints were received or filed.⁴

3. In April of 2007, Northern Building entered into an agreement to build an expansion on the Crow Wing County, Minnesota, cabin of Timothy and LuAnne Teachout for the total contract price of \$67,000.00 (the "Teachout cabin"). Northern Building received an initial payment of \$22,500.00.⁵

4. Northern Building performed preliminary work for the Teachout cabin, the reasonable value of which was \$3,949.00.⁶ Due to disagreements between Respondents and the Teachouts, Respondent's walked off the job and quit working on the Teachout cabin on or about June 9, 2007.⁷

5. Respondents did not refund the \$18,551.00 balance of the Teachout's downpayment.⁸

6. Mattson Lumber Company ("Mattson Lumber") acquired a judgment against Mr. Christensen on November 28, 2007, in the original principal amount of \$24,714.16.⁹ Mattson Lumber, on February 19, 2009, stated that "Christensen hasn't made any payments."¹⁰

7. John Nelson d/b/a All in One Door acquired a judgment against Respondents on May 5, 2008, in the original principal amount of \$2,500.00. Non-payment to Mr. Nelson arose out of a dispute between Respondents and Mr. Nelson. Although no satisfaction of judgment has been filed, the parties have resolved their dispute. Mr. Nelson declined to cooperate with the Department's investigation of the Respondents.¹¹

8. On September 17, 2008, Respondents entered into a written contract with Leo and Jackie Conroy in the original amount of \$17,890.00 for a porch addition.¹² On September 26, 2008, the Conroys paid Mr. Christensen d/b/a Building Solutions, Inc. the sum of \$8,950.00 as provided for under the contract with Northern Building.

² *Id.*

³ Test. of Joseph Christensen.

⁴ *Id.*, test. of C. Durenberger.

⁵ *Id.*, Ex. 6, test. of Timothy Teachout.

⁶ Ex. 6, test. of T. Teachout.

⁷ *Id.*, test. of J. Christensen.

⁸ *Id.*

⁹ Ex. 4.

¹⁰ *Id.*, test. of C. Durenberger.

¹¹ Ex. 7, test of J. Christensen and C. Durenberger.

¹² Ex. 8, test. of J. Christensen.

Respondents were to start the job no later than October 15, 2008. Respondents never started the job.¹³

9. On October 20, 2008, the Teachouts were awarded a default judgment against Northern Building in the principal amount of \$18,551.00, plus their costs and expenses.¹⁴

10. On November 18, 2008, Mr. Christensen hired Brainerd, Minnesota, attorney George P. Wetzel, Jr., to pursue vacation of the Teachout's judgment.¹⁵ Mr. Christensen's initial check to Mr. Wetzel for that representation was returned for insufficient funds.¹⁶

11. Attorney Wetzel's efforts to vacate the judgment were unsuccessful. Respondents failed to pay Mr. Wetzel's attorneys fees and the costs of the vacation case.¹⁷ Mr. Wetzel sought and acquired a judgment on April 20, 2009, against Respondents in the amount of \$7,004.19.¹⁸

12. Respondents have not paid and have made no effort to pay the Teachout judgment.¹⁹

13. Respondents did not notify the Department about any of the judgments against them.²⁰

14. On February 26, 2009, the Department issued to Respondents a Licensing Order whereby Respondents were ordered to pay a monetary penalty of \$15,000.00 and Northern Building's residential building contractor license was revoked, due to the Teachout and Mattson Lumber judgments and three other pending civil actions against Respondents in Crow Wing County, Minnesota. Respondents appealed the Licensing Order in due course.²¹

15. On March 16, 2009, the Commissioner issued a Notice and Order for Prehearing Conference.²²

16. Steiger Enterprises d/b/a Floor to Ceiling acquired a judgment against Respondents on March 17, 2009, in the original principal amount of \$982.20, for a

¹³ Ex. 9.

¹⁴ *Id.*

¹⁵ Test. of J. Christensen, Exs. 1 and 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Ex. 1.

¹⁹ *Id.*, test. of J. Christensen and C. Durenberger.

²⁰ Test. of J. Christensen and C. Durenberger.

²¹ Notice and Order for Prehearing Conference.

²² Notice and order for Prehearing Conference.

laminated countertop that was installed. Respondents have not paid and have made no effort to pay the Steiger Enterprises judgment.²³

17. Midwest Bank acquired a judgment against Respondents on April 13, 2009, for the original principal amount of \$48,147.34 for a defaulted business loan. Respondents have made no payments towards the judgment.²⁴ Mr. Christensen's brother is making payments on that loan. As long as the brother's payments continue, Midwest Bank has agreed to refrain from repossessing collateral consisting of equipment, trailers and a motor vehicle.²⁵

18. Minn. Stat. § 326B.89 governs a Contractors Recovery Fund which, among other things, was established to compensate residential homeowners who have obtained a final judgment against residential contractors on the grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance that arose directly out of a contract directly between a licensee and the homeowner that was entered into prior to the cause of action and that occurred when the licensee was licensed and performing as a residential contractor.²⁶

19. After application, the Teachouts were paid \$18,551.00 from the Contractors Recovery Fund in May 2009.²⁷

20. On May 22, 2009, Respondents entered into a written Contract for Payment with Attorney Wetzel whereby Respondents agreed to pay him \$1,200.00 per month commencing June 20, 2009, with payment in full to be made no later than November 20, 2009.²⁸

21. On June 2, 2009, Mr. Christensen paid Jackie Conroy \$1,500.00 cash.²⁹ On June 9, 2009, the Conroys commenced an action in Crow Wing County Conciliation Court for recovery of \$7,500.00, scheduled to go to trial on June 22, 2009.³⁰ On June 17, 2009, Mr. Christensen paid Jackie Conroy \$1,000.00 cash, leaving a balance due the Conroys of \$6,450.00.³¹

22. Pursuant to the Prehearing Conference, an Administrative Law Judge issued a Scheduling Order for a hearing to be held on June 18, 2009.³²

23. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

²³ Ex. 3, test of C. Durenberger.

²⁴ Ex. 5, test of C. Durenberger.

²⁵ Ex. 10, test. of J. Christensen.

²⁶ Minn. Stat. § 326B.89.

²⁷ Test. of T. Teachout and C. Durenberger.

²⁸ Ex. 2.

²⁹ Ex. 11, test of J. Christensen.

³⁰ Ex. 9.

³¹ Ex. 11, test. of J. Christensen.

³² Scheduling Order.

24. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

25. The Memorandum that follows explains the reasons for these Findings of Fact, and to the extent that the Memorandum may contain additional findings of fact, including findings on credibility, the Administrative Law Judge incorporates them into these Findings.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326B.082, and 326B.84.

2. The Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Department bears the ultimate burden to show by a preponderance of the evidence that the Respondents' licenses should be disciplined.

4. Under Minn. Stat. § 326B.082, subds 11(b), the commissioner may revoke a person's license if the commissioner finds that the person:

(1) committed one or more violations of the applicable law;

...

or

...

(9) performed work in connection with the permit, license, registration, or certificate or conducted the person's affairs in a manner that demonstrates incompetence, untrustworthiness, or financial irresponsibility.

5. The Department has proved by a preponderance of the evidence that Respondents are financially irresponsible, in violation of Minn. Stat. § 326B.082, subd. 11(b), for failing to satisfy the multiple judgments. The Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ and 326B.082, and the imposition of sanctions is in the public interest.

6. In addition to the grounds set forth in section 326B.082, subdivision 11, the commissioner may deny, suspend, limit, place conditions on, or revoke a license or certificate of exemption, or may censure the person holding the license or certificate of exemption, if the applicant, licensee, certificate of exemption holder, qualifying person,

or affiliate of an applicant, licensee, or certificate of exemption holder, or other agent owner:

. . .

(4) has failed to reasonably supervise employees, agents, subcontractors, or salespersons, or has performed negligently or in breach of contract, so as to cause injury or harm to the public;

(5) has violated or failed to comply with any provision of sections 326B.802 to 326B.885, any rule or order under sections 326B.802 to 325B.885, or any other law, rule, or order related to the duties and responsibilities entrusted to the commissioner;

. . .

(9) has engaged in an act or practice that results in compensation to an aggrieved owner or lessee from the contractor recovery fund pursuant to section 326B.89, unless:

(i) the applicant or licensee has repaid the fund twice the amount paid from the fund, plus interest at the rate of 12 percent per year; and

(ii) the applicant or licensee has obtained a surety bond in the amount of at least \$40,000, issued by an insurer authorized to transact business in this state;

. . .

(11) has had a judgment entered against them for failure to make payments to employees, subcontractors, or suppliers, that the licensee has failed to satisfy and all appeals of the judgment have been exhausted or the period for appeal has expired;

. . .

(15) has engaged in an act or practice whether or not the act or practice directly involves the business for which the person is licensed, that demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the commissioner.³³

7. The Department has proved by a preponderance of the evidence that Respondents violated of Minn. Stat. § 326B.84, subds. 4, 5, 9, 11, and 15 by:

³³ Minn. Stat. § 326B.84.

- a. performing negligently under the Teachout contract by failing to complete the agreement and failing to return unearned funds; and
- b. engaging in an act or practice that resulted in compensation to the Teachouts from the contractor recovery fund pursuant to section 326B.89; and
- c. failing to satisfy the multiple judgments; and
- d. failing to reimburse the contractor recovery fund; and
- e. engaging in acts or practices directly involving the residential building contractor license, as described in subparagraphs a, b, c, and d above, that demonstrate that Respondents are untrustworthy, financially irresponsible, and otherwise incompetent or unqualified to act under the residential building contractor license granted by the commissioner.

8. Minn. Stat. § 326B.805, subd. 5 (c) provides, in relevant part:

Each licensee . . . must notify the commissioner in writing if the licensee . . . is found to be a judgment debtor based upon conduct requiring licensure pursuant to sections 326B.802 to 326B.885 within 15 days of the finding.

9. By failing to notify the Commissioner of the judgments, Respondents have violated Minn. Stat. § 326B.805, subd. 5 (c), and are therefore subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 326B.082 and 326B.84.

10. The Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 326B.082 and 326B.84. The imposition of sanctions is in the public interest.

11. The sanction of revocation is necessary to protect the public interest.

12. A \$15,000.00 civil penalty is reasonable under the circumstances.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that the Commissioner of Labor and Industry take such disciplinary action against the residential building contractor license of Northern Building Solutions, Inc. and Joseph W. Christensen as may be appropriate under the circumstances.

Dated: July 20, 2009

s/M. Kevin Snell

M. Kevin Snell

Administrative Law Judge

Reported: Digitally recorded
 No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Steve Sviggum, Commissioner of the Department of Labor and Industry, 443 Lafayette Road, St. Paul, Minnesota 55155, (651) 284-5005, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The evidence in this case established that the Department has clearly met its burden of showing by a preponderance of the evidence that the Respondents' actions and inactions meet the statutory requirements for discipline.

Respondents did not pay and have made no attempt to pay Mattson Lumber Company, Midwest Bank, Steiger Enterprises, or the contractors fund for amounts owing those entities. Mr. Christensen agreed to pay Mr. Wetzel and has recently paid Ms. Conroy \$2,500.00 of the \$8,950.00 that Respondents have owed her since the middle of October 2008. Respondents appear to have settled the dispute with All in One Door regarding the \$2,500.00 judgment it has against Respondents. Overall, Respondent's still owe homeowners, subcontractors and suppliers, and the contractor's fund in excess of \$130,000.00.

The record in this case suggests that Mr. Christensen and Northern Building have engaged in the practice of using the funds from new customers to satisfy obligations under previous contracts, rather than using the funds for the purpose expected by the new customers. Mr. Christensen's testimony suggests that he expects to continue this practice in the future, as he is counting on new business to satisfy existing judgments and obligations. Mr. Christensen also appears to be currently conducting business as a residential contractor, even though Northern Building's license expired on March 31, 2009. The ALJ notes that neither respondent has submitted a renewal application to the Commissioner.³⁴

It is commendable that the Mr. Christensen is taking steps at the present time to attempt to arrange for payment of some of his unpaid judgments. However, financial responsibility is a prerequisite for maintaining a license, not something that the Department can overlook and allow a licensee to continue to operate as a contractor once the licensee has demonstrated financial irresponsibility. Mr. Christensen states that without a contractor's license he will have difficulty in making enough money to satisfy the judgments. That fact is not one the Commissioner is required to consider when enforcing the laws designed to protect homeowners and subcontractors. Respondents' current financial situation must be remedied – reestablishing a track

³⁴ Minn. Stat. 326B.805 Subd. 3.Prohibition. provides in relevant part:

. . . no persons required to be licensed by subdivision 1 may act or hold themselves out as a residential building contractor, residential remodeler, residential roofer, or manufactured home installer for compensation without a license issued by the commissioner.

record of financial responsibility – before Respondents can be considered eligible for a residential contractor license in two years.³⁵

The purpose of Minn. Stat. § 326B is to protect the public from residential building contractors who are unlikely to fulfill their responsibilities to homeowners and subcontractors. A preponderance of the evidence suggests that Respondents have demonstrated that they are unlikely to fulfill their responsibilities to homeowners and subcontractors. Revocation and civil penalties are necessary to protect the public interest.

M. K. S.

³⁵ Minn. Stat. 326B.082, subd. 11 (c) provides:

If the commissioner . . . revokes person's . . . license . . . under paragraph (b), the person is prohibited from reapplying for the same type of . . . license . . . for at least two years after the effective date of the revocation or denial. The commissioner may, as a condition of reapplication, require the person to obtain a bond or comply with additional reasonable conditions the commissioner considers necessary to protect the public.